In the High Court of Judicature at Madras

Dated : 17.12.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1181 of 2007

M/s.Paridhan Exports
No.15 Race Course road
Guindy,Chennai 32. ... Appellant

Vs

The Assistant Commissioner of Income Tax
Circle – IV,Chennai .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 27.7.2006 made in I.T.A.No.232/Mds/2003 for the assessment year 1998-1999 against the order of Commissioner of Income-Tax(Appeals)VIII Madras -34, dt 02/12/02 in A.No.27/2002-2003 and arising out of order of Assistant Commissioner of Income-Tax CircleIV,Madras -34,dt-04/03/02 in PAN/GIR.No.2328-P

For Appellant :- Mr.Philip George

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed against the order of the Income-tax Appellate Tribunal, 'B' Bench, Chennai dated 27.7.2006 made in I.T.A.No.232/Mds/2003 for the assessment year 1998-1999.

2. The facts as culled out from the statement of facts are as follows:-

The assessee, a registered firm engaged in the business of manufacture and export of garments and also carrying on money lending business. For the assessment year 1998-99, the appellant-assessee filed its return of income on 2.11.1998 declaring nil total income after claiming deductions under Section 80 HHC and 80IA of Income Tax Act 1961. The return of income was processed and assessment completed under Section 143(1)(a) on 14.8.2000. Subsequently notice under Section 148 was issued on 24.8.2000 and the assessment was reopened. The appellant filed letter dated 4.10.2000 requesting to treat the original

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return of income filed in response to notice under Section 148. The assessing officer asked the assessee to explain as to why the interest income should not be treated as income from other sources and disallow the benefit under under Section 80 HHC as it was not derived from export business and (ii) as to whey the interest income and export entitlements /duty draw back should not be deducted from the profits for the purpose of deduction under Section 80 IA as these were not derived from the industrial undertaking ? While completing the assessment under Section 143(3) read with Section 147 vide order dated 4.3.2002 the following disallownaces were made by the assessing officer.

a) Interest income was treated as income from other sources and disallowed the benefit under Section 80HHC.

(b) Interest income and export entitlements /duty drawback reduced from the profits of the business and disallowed the deduction u/s 80IA and

(c) Restricted the deduction u/s 80 HHC and 80IA to business income as arrived at by the assessing Officer at Rs.2,73,99,368/-.

3. The appellant carried the matter on appeal before the Commissioner of Income Tax (Appeals) primarily questioning the jurisdiction of the authorities to reopen the assessment. The Commissioner of Income Tax (Appeals) upheld the jurisdiction of the assessing officer in reopening the assessment and partly allowed the appeal on other issues on merits. Aggrieved by that portion of the order that went against him the appellant filed appeal before the Income Tax Appellate Tribunal. The Tribunal by its order dated 27.7.2006 dismissed the appeal by holding that original assessment was done u/s 143(1)(a) and it is not correct to contend that the assessment was made after active application of the assessing officer. The correctness of the said order is now put in issue before this Court by framing the following substantial questions of law:-

> 1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the jurisdiction of the assessing Officer in reopening the assessment by holding that there was no change of opinion, even when the appellant had truly and fully disclosed all the relevant materials for completion of assessment ?
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> 2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that when the assessment was completed u/s 143(1)(a), it cannot be considered to be assessment after active application of mind by the Assessing officer and there was no change of opinion and could be validly reopened ?

4. We heard the arguments of the learned counsel for the appellant and perused the materials on record.

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5. The issue similar to the present case of reopening the assessment came to be considered by the Supreme Court in the case of ASSISTANT COMMISSIONER OF INCOME TAX VS. RAJESH JHAVERI STOCK BROKERS P.LTD (291 ITR 500 (SC). In that case, the apex Court considering the relevant provisions, has held that under the Scheme of Section 143(1) of the Income Tax Act 1961 as substituted with effect from April 1, 1989, and prior to its substitution with effect from June 1, 1999, what were permissible to be adjusted under the first proviso to section 143(1)(a) were: (i) only apparent arithmetical errors in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction, allowance or relief, which was prima facie admissible on the basis of information available in the return but not claimed in the return, and similarly (iii) those claims which were, on the basis of the information available in the return, prima facie inadmissible, and were to be rectified/allowed/disallowed. What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The Assessing officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts and documents, either in allowing or in disallowing deductions, allowance or relief. Though technically the intimation issued was deemed to be a demand notice under Section 156, that did not preclude the right of the Assessing Officer to proceed under Section 143(2) : that right is preserved and not taken away. The apex Court further observed that with effect from April 1, 1998, the second proviso to section 143(1)(a) was substituted. During the period between April 1, 1998, and May 31, 1999, sending of an intimation was mandatory. The legislative intent is very clear from the use of the word "intimation" as substituted for "assessment" that two different concepts emerge. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(a) no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The intimation under section 143(1)(a) could not be treated to be an order of assessment.

Under the first proviso to the newly substituted section 143(1), with effect from June, 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. It could not therefore be said that an "assessment" is done by them. The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156 for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. Nothing more could be inferred from the deeming provisions. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion does not arise.

It was further observed by the apex Court that the expression

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````"reason to believe" in Section 147 would mean cause or justification. If the Assessing officer has cause or justification to know or suppose that income had escaped assessment, he could be said to have reason to believe that income had escaped assessment. The expression could not be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What was required is "reason to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question was whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income was not the concern at that stage. This was so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer.

Taxing income escaping assessment in the case of an intimation under Section 143(1)(a) is covered by the main provision of Section 147 as substituted with effect from April 1, 1989 and initiating reassessment proceedings in the case of intimation would be covered by the main provision of section 147 and not the proviso thereto. Only one condition has to be satisfied. Failure to take steps under Section 143 (3) will not render the Assessing Officer powerless to initiate reassessment proceedings when intimation under Section 143(1) has been issued. The apex Court ultimately held that the assessing officer had jurisdiction to issue notice under section 148 of the Act for bringing to tax the income escaping assessment in an intimation under section 143 (1)(a) on the ground that the claim for bad debts by the assessee was not acceptable as the conditions for allowance specified in section 36 (1)(vii) and 2 were not fulfilled.

6. In view of the categorical exposition of law by the Supreme Court in respect of question of law raised, we are of the view that the appeal does not merit consideration and has to be dismissed and accordingly the same is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

krr/

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To

1. The Assistant Registrar, Income-Tax Appellate Tribunal,
   III Floor, Rajaji Bhavan, Besant Nagar,
   Madras 90 (with records five copies).

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2. The Assistant Commissioner of Income Tax, Circle (IV) Chennai 34.

3. The Commissioner of Income Tax (Appeals)VIII 121,
Mahatma Gandhi Road, Madras – 600 034

+1cc to Mr.Philip George, Advocate Sr.74949

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